IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.33857 of 2007

RAMAKANT KUNWAR, SON OF LATE BHAGIRATH KUMAR, RESIDENT OF VILLAGE-HANUMANGANJ, MISHRA TOLA, P.S. TOWN DARBHANGA, DISTRICT-DARBHANGA.

---------- **PETITION ER**

Versus

1.THE STATE OF BIHAR
2.JAI PRAKASH MISHRA S/O GAURI SHANKAR MISHRA, R/O MOHALLA –MIRZAPUR, DIGGHI POKHAR,.P.S NAGAR,DIST-DARBHANGA -------- **OPP.PARTIES**

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4 14-11-2008 Heard Mr. Md. Sufiyan, the learned counsel for the petitioner and Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State. Although, notice was sent to Opp. Party no.2 , it has been reported that he is dead and the registered cover sent to him was returned unserved by the peon with an endorsement that no such person lives at the given address.

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The petitioner who along with another figured as F.I.R. named accused in Darbhanga Town P.S. Case no.6 (12) of 1977, has prayed for the quashing of the order dated 20.6.1979 passed by the learned Chief Judicial Magistrate, Darbhanga wherein he has taken cognizance under Sections 448,341,307 and 323 I.P.C. against both the accused.

According to the prosecution case based on the fardbeyan of the informant, namely, Jai Prakash Mishra, recorded on 7.12.1977 while he was sleeping in Room no.1 of Lake View Hotel on the preceding night , he heard knocking on the door and on opening the door , the two F.I.R. named accused , who run a Oil Mill in front of

the poor home along with another person entered into his room , caught hold of him and started assaulting him with slaps and fists and intended to throw him from the roof top, but he was saved and on ***hulla*** raised by the informant several inhabitants of the hotel as also the Manager arrived and a crowd gathered below . They also recognized the culprits. The injury report of the injury sustained by the informant has also been appended with the application.

The submission advanced by the learned counsel for the petitioner is that from perusal of the averments in fardbeyan as also the injury report it appears therefrom that no offence under Section-307 I.P.C. can be said to have been made out against the petitioner.

Having perused the fardbeyan and the injury report , I am also of the opinion that no offence under Section 307 I.P.C. can be said to have been made .

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Due regard being had to the facts and circumstances of the case, I hereby quash the impugned order taking cognizance so far as this petitioner is concerned in respect of Section 307 I.P.C.only. While quashing the order taking cognizance in respect of an offence under Section 307 I.P.C., it is hereby directed that the trial under the remaining Sections of the Penal Code as against the petitioner and other accused shall continue.

Before I part I must express my grave concern for the court below not disposing of this case registered in the year 1977 still, notwithstanding the passage of almost over thirty years.

Accordingly, this application is allowed in part to the extent

stated above. It is accordingly directed that the Magistrate in seisin of the case shall dispose of the same expeditiously, preferably within a period of six months.

Let the direction of this case be promptly carried out.

(Abhijit Sinha, J)

NKS/-

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